In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 185

GERTRUDE ARRINGTON, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The *per curiam* opinion of the Court of Appeals (Pet. 25) has not yet been reported. The memorandum opinion of the District Court (Pet. 25-29) is reported at 159 F. Supp. 843.

JURISDICTION

The order of the Court of Appeals affirming the judgment of the District Court was entered on June 5, 1958 (C.A. 14).[1] On July 7, 1958, Mr. Justice

[1] The transcript and supplemental transcript of record, paginated consecutively, will be referred to as "R.". The proceedings had in the Court of Appeals, separately numbered, will be referred to as "C.A.".

Clark extended the time for filing the petition for a writ of certiorari to July 18, 1958. The petition for a writ of certiorari was filed on July 17, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the search warrant is supported by a showing of probable cause.

STATEMENT

Petitioner has not yet been indicted or tried. The facts may be summarized as follows:

On January 23, 1958, Private Jack E. Evans, of the District of Columbia police force, made an affidavit substantially to this effect (R. 5, 13-16):

A complaint had been received of lottery violations in the 1200 block of 7th Street, N. W., Washington, D. C. (R. 13). While investigating this report, officer Evans made twelve number bets with "Jane Doe #2" at 1229½ 7th Street, N. W., and vicinity during the period January 9-22, 1958, and saw her accept bets from numerous other persons (R. 13-15). Officer Evans also placed two number bets with "John Doe #1", on January 11, 1958. He later saw two of these bets turned over to "Jane Doe #2" (R. 13). "John Doe #1" told Evans that "Jane Doe #2" employed him to run numbers (R. 14). Evans saw "John Doe #1" visit "Roy's Valet", 614 N Street, N. W., Washington, D. C., a known numbers "drop", three times during the period of investigation (R. 14). On January 18, 1958, Evans saw "Jane Doe #2" carefully

fold a bag which she had filled with numbers slips and place it under her coat, holding it in place with folded arms (R. 14-15). Evans followed the woman to 614 N Street, N. W., and watched her enter. About four minutes later she emerged from the business establishment with her hands free. She was adjusting her cap with both hands, and her coat was open. The bag of slips was not to be seen and her coat pockets did not bulge (R. 15).

On the basis of this affidavit, the United States Commissioner found probable cause to believe that gambling paraphernalia was being concealed at Roy's Valet, 614 N Street, N. W., Washington, D. C., and issued a search warrant for the premises (R. 3). $132.00 in bills and a quantity of "numbers slips and rundown tapes" were found during the search on January 24, 1958 (R. 4).

Petitioner was one of the two employees at the valet shop, and the property seized was inventoried in her presence (R. 4, 24). On January 27, 1958, a complaint was filed with the Commissioner charging petitioner with promoting a lottery and possessing number slips (R. 52). After appearing before the Commissioner, petitioner's preliminary hearing was continued until February 20, 1958 (R. 51).

On February 11, 1958, petitioner filed a motion in the United States District Court for the District of Columbia to restrain the use of the papers and money taken under the search warrant, alleging that there was no probable cause for the issuance of the search warrant (R. 6-12). The District Court treated the motion as one to suppress under Rule 41(e), F. R.

Crim. P., and held that the affidavit established sufficient probable cause for the issuance of the warrant. On March 17, 1958, it denied the motion to suppress (R. 24-28).

Petitioner appealed from the order denying her motion (R. 29). The government moved for summary affirmance or dismissal of the appeal in the Court of Appeals, contending that the appeal was premature, and that the District Court's ruling on probable cause was correct in any event (C.A. 1-5). After answer and reply, the Court of Appeals entered a *per curiam* order affirming the judgment of the District Court (R. 14).

ARGUMENT

Petitioner argues this case as though the Court of Appeals concluded that her appeal was premature. The fact is, however, that both the District Court and the Court of Appeals passed on the merits of her motion to suppress. The District Court expressly found that there was probable cause to justify issuance of the search warrant. On appeal, the government asked the Court of Appeals either to dismiss the appeal as premature or to affirm summarily the judgment of the District Court because the lower court was clearly correct on the issue of probable cause. The Court of Appeals chose to affirm the judgment below. There is thus no occasion to consider the questions of whether or not a motion to suppress may be made before indictment, and whether or not petitioner may appeal from an adverse ruling on her motion prior to trial on the merits. See *Carroll* v. *United States*, 354 U.S. 394, 403-405; *Go-Bart Im-*

porting Company et al. v. *United States*, 282 U.S. 344, 349-350.

The police officer's affidavit was clearly sufficient to show probable cause by federal standards. See *Brinegar* v. *United States*, 338 U.S. 160, 175-176. The officer spelled out the time, place, and detailed circumstances of numerous violations of the gambling laws by "Jane Doe #2", and explained with particularity the events which he had seen and which led to the conclusion that the premises at 614 N Street, N. W., were being used in the gambling operation. Judged by the strictest standards, there was enough before the Commissioner to support his finding of probable cause and to justify issuance of a search warrant. See *Giordenello* v. *United States*, No. 549, O.T. 1957, decided June 30, 1958.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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